

EXHIBIT E

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Feb-22-08 02:28pm From-Buchalter Nemer SF + T-250 P.002/005 F-037

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6 Attorneys Specially Appearing for Defendant
 7 FRESH 'N HEALTHY, INC.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10

11 ASA FARMS, INC., a California
 corporation and BRAGA RANCH,

12 Plaintiffs,

13 vs.

14 FRESH 'N HEALTHY, INC., a Delaware
 corporation, MARK WILLIAMS, an
 individual; JACK PARSON, an individual;
 16 STEVEN CINELLI, an individual; CHAD
 HAGEN, an individual, SANTOS
 MARTINEZ, an individual; DON BEAM,
 an individual; DARRYL NICHOLSON, an
 individual; RICHARD MAY, an
 individual; THOMAS COLOGNA, an
 individual; PRESTWICK PARTNERS,
 LLC, a California limited liability
 company; SOLSTICE VENTURE
 PARTNERS, LLC, a business entity form
 unknown; VFINANCE INVESTMENTS, a
 business entity form unknown; FMP
 VINEYARD, LLC, a New Mexico limited
 liability company, BUTTONWOOD
 OPTION, LLC, a business entity form
 unknown; DW, LLC, a business entity
 form unknown; M SOLAZZO TRUST
 2002; P. SOLAZZO 1998; GIBBONS
 FAMILY TRUST; BIXLER TRUST;
 STEIGERWALD TRUST and CARTER
 TRUST, and DOES 1 through 50,
 inclusive,

27 Defendants.

28 BN 1746173v2

Case No. C08-00122 PVT

**STIPULATION TO MODIFY
PRELIMINARY INJUNCTION**

(RE: DOCKET NO. 2)

Case 5:08-cv-00122-JF Document 20 Filed 02/25/2008 Page 2 of 5

Feb-22-08 D2:29pm From-Buchalter Name: SF + T-250 P.003/005 F-637

1 This Stipulation, made and entered into by and between Plaintiffs ASA Farms, Inc. and
2 Braga Ranch ("Plaintiffs") and Defendant Fresh 'N Healthy, Inc. ("Defendant") is based upon the
3 following facts:

4 A. On or about January 29, 2008 this Court made and entered its Order Granting
5 Plaintiffs' Motion For Preliminary Injunction (the "Order"), which prevents, among other things,
6 Defendant from selling or transferring "any or all assets covered by or subject to the trust
7 provisions of the PACA without agreement of the parties or until further order of this Court."
8 [Order 2:6-11.]

9 B. Order further provides that the assets subject to the Order include all assets of
10 Defendant unless Defendant "can prove that a particular asset" is not subject to the PACA, with
11 the burden of proof on the Defendant.

12 C. Defendant contends, and Plaintiffs reserve their rights with respect to such
13 contentions, that its machinery, fixtures, equipment and intellectual property were purchased with
14 non-PACA assets, including paid in capital and loans from, among others, Comerica Bank.

15 D. Defendant is in default of its obligations to its lender Comerica Bank and has
16 ceased to conduct business. The net realizable value of Defendant's machinery, fixtures,
17 equipment and intellectual property is at risk of diminution due to lack of security, lack of
18 maintenance and the accrual of rents and other storage charges. Defendant desires to sell all or
19 substantially all of its machinery, fixtures, equipment and intellectual property in one or more
20 private sales, as summarized on Exhibit A hereto. Comerica Bank, as secured lender, has
21 consented to such sales of its collateral.

22 E. In order to preserve Plaintiffs' rights, if any, in and to the proceeds of the
23 machinery, fixtures, equipment and intellectual property the parties have agreed to the entry of an
24 order modifying the Order on the terms set forth below.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED that this Court may make and enter its
order as follows:

28 1. Defendant is hereby authorized to sell, in one or more private sales, its machinery,

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Feb-22-08 02:29pm From-Buchalter Nemer SF

T-250 P-004/005 F-637

1 fixtures, equipment and intellectual property, including labels, packaging and unregistered trade
 2 names and trademarks, provided, however, that the proceeds of such sale or sales shall be held in
 3 a segregated account at Comerica Bank subject to any and all claims of Plaintiffs, if any, to assert
 4 PACA rights thereto.

5 2. Except as expressly set forth, nothing herein contained shall waive, alter or modify
 6 the rights of the parties under the Order, and the segregated proceeds shall be subject to Plaintiffs'
 7 PACA rights, if any, to the same extent and with the same validity and priority as such rights
 8 attached to the machinery, fixtures, equipment and intellectual property itself.

9

10 DATED: February _____, 2008

MURRAY & MURRAY
A Professional Corporation

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By: _____

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Attorneys Specially Appearing for Defendant
FRESH 'N HEALTHY, INC.

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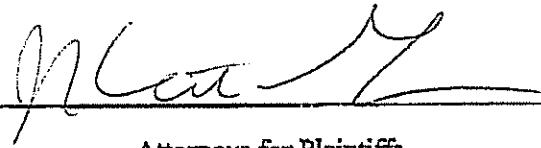
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DATED: February 21, 2008

LOMBARDO & GILLES, LLP

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By: 

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Attorneys for Plaintiffs
ASA FARMS, INC., and BRAGA RANCH

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Comerica Bank hereby consents to entry of the foregoing order and agrees to be bound
 thereby.

23

DATED: February 22, 2008BUCHALTER NEMER
A Professional Corporation

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25

By: 

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ROBERT E. IZMIRIAN
Attorneys for
COMERICA BANK

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BN 1746173v2

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STIPULATION TO MODIFY PRELIMINARY INJUNCTION - CASE NO. C08-00122 PVT

Received Time Feb. 22. 2:43PM

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1 fixtures, equipment and intellectual property, including labels, packaging and unregistered trade
2 names and trademarks, provided, however, that the proceeds of such sale or sales shall be held in
3 a segregated account at Comerica Bank subject to any and all claims of Plaintiffs, if any, to assert
4 PACA rights thereto.

5 2. Except as expressly set forth, nothing herein contained shall waive, alter or modify
6 the rights of the parties under the Order, and the segregated proceeds shall be subject to Plaintiffs'
7 PACA rights, if any, to the same extent and with the same validity and priority as such rights
8 attached to the machinery, fixtures, equipment and intellectual property itself.

9

10 DATED: February 27, 2008

MURRAY & MURRAY
A Professional Corporation

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12 By: Robert A. Frankel

13

14 Attorneys Specially Appearing for Defendant
15 FRESH 'N HEALTHY, INC.

16

DATED: February _____, 2008

LOMBARDO & GILLES, LLP

17

18

By: _____

19

20 Attorneys for Plaintiffs
ASA FARMS, INC., and BRAGA RANCH

21

22 Comerica Bank hereby consents to entry of the foregoing order and agrees to be bound
23 thereby.

24

DATED: February _____, 2008

BUCHALTER NEMER
A Professional Corporation

25

26

By: _____

ROBERT E. IZMIRIAN
Attorneys for
COMERICA BANK

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BN 1746173v2

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Feb-22-08 02:29pm From-Buchalter Nemer SF + T-258 P 005/005 F-637

EXHIBIT A

Pending sales of assets of Fresh 'N Healthy, Inc.

1 3. To Ashman Company, substantially all of the equipment, including processing
2 4. equipment, farm equipment, pumps, irrigation pipes, forklifts, trucks, trailers and warehouse and
3 5. office furnishings located in Gilroy and El Centro, California, and trade names and labels
4 6. Gourmet Veg-Paq, Reda Verde, Ruby Ridge Farms, Truly Vegetarian, Salad Select and Tesoro
5 7. Farms for \$525,000; and

8 2. To Ray Nava, substantially all of the equipment and vehicles located at Gilroy
9 Machine, for \$60,000.

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BN 1749449v1

EXHIBIT F

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be sent to Salinas Office

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February 27, 2008

Via Facsimile & U.S. Mail

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333 Market Street, 25th Floor
San Francisco, CA 94105
(counsel for Comerica Bank)

**Re: REQUEST TO STIPULATE TO SHORTEN TIME FOR HEARING
MOTION TO INTERVENE
OUR CLIENT: Oceano Packing Company, LLC**

Dear Counsel:

This firm represents Oceano Packing Company, LLC ("Oceano").

Oceano is filing, today, a Motion to Intervene (the "Motion") in the case styled ASA Farms, Inc. v. Fresh 'N Healthy, Inc., N.D.Cal. case number C08-00122. The purpose of this letter is to request a stipulation for an order shortening time for hearing on the Motion. Oceano proposes the following shortened hearing and briefing schedule for the Motion:

Oceano files Motion:	February 27, 2008
Oppositions, if any, to be filed:	On or before March 5, 2008
Oceano's Reply to be filed:	On or before March 7, 2008
Hearing on the Motion:	March 10, 2008

Please let me know whether or not your respective clients will agree to this proposed shortened time for hearing by 2:00 p.m. on Thursday, February 28, 2008.

If I do not receive agreement from all parties to hearing of the Motion on shortened time by 2:00 pm on February 28, 2008, I will proceed to file an ex parte application to shorten time with the Court.

If you have any questions or concerns regarding these matters, please feel free to call me.

Sincerely,

Anastassiou & Associates



Scott J. Allen, Esq.
Attorneys for Oceano Packing Company, LLC

cc: Oceano Packing Company, LLC

F:\OCA\Fresh 'N Healthy\Correspondence\02.27.08 request to stip shortened time.wpd